

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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| IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION | MDL No. 2:18-mn-2873-RMG This Document Relates to: <i>Battisti, et al., v. The 3M Company, et al.,</i> 2:19-cv-00143-RMG |
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MOTION FOR LEAVE TO AMEND COMPLAINT

Plaintiffs, David Battisti, Regina Saueracker, Mary Ann Benson, Susan Schell, Carol Smith and Gerald Smith, her husband, and Anita Pringle and David Pringle, her husband, for themselves and on behalf of all other similarly situated, by and through their undersigned counsel, move pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure and CMOs 2, 2.A, 3 and 3.C for leave to amend their Complaint.

1. Federal Courts allow liberal amendment of pleadings when justice so requires. Fed. R. Civ. P. 15(a)(2). The Fourth Circuit Court of Appeals has read Rule 15(a) as requiring “‘free’ allowance: motions to amend are to be granted in the absence of a ‘declared reason’ ‘such as undue delay, bad faith or dilatory motive ..., repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party ..., futility of amendment, etc.’” *Ward Elecs. Serv., Inc. v. First Commercial Bank*, 819 F.2d 496, 497 (4th Cir. 1987).

2. The Plaintiffs, for themselves and on behalf of a Class of similarly situated individuals, brought this action for damages sustained to their person and for medical monitoring.

3. The operative Complaint includes Plaintiffs David Battisti, Regina Saueracker, Mary Ann Benson, Susan Schell, Carol Smith and Gerald Smith, her husband, and Anita Pringle and David Pringle, her husband.

4. The proposed Third Amended Complaint: (1) adds Plaintiffs GORDON DITCHFIELD, JOHN HOLLOWAY, MARY JAMES and MARVIN JAMES, her husband, TIM BRANDENBURG, MATHEW LAWSON, MARY LAWSON, and ADAM HILL; (2) adds factual allegations regarding the AFFF and resulting contamination at the Florida State Fire College; (3) amends the two class definitions (PFAS Invasion Injury Class and Medical Monitoring Class); adds a Property Damage Class; (4) adds a cause of action for Trespass (Count IV); and adds a cause of action for Private Nuisance (Count V).

5. The proposed Third Amended Complaint does not add any new defendants.

6. Enclosed as **Exhibit A** is a redlined version of Plaintiffs' proposed Third Amended Complaint, which reflects all revisions made therein. Enclosed as **Exhibit B** is Plaintiffs' proposed Third Amended Complaint.

7. Since this case is not a Water Provider action, nor has been selected as a bellwether, the case remains in an early stage and no parties will be prejudiced by amendment. Thus, amendment is appropriate at this time.

8. Given the nature of this motion as well as the brevity of the reasons herein, a memorandum of law is not included herewith pursuant to Local Rule 7.04.

9. Pursuant to Local Rule 7.02, Plaintiffs conferred with the Defendant Coordinating Committee for the relief requested in this motion, and the Defendants do not object to the proposed amendment.

10. Pursuant to paragraph 3 of this Court's Case Management Order No. 2.A, prior to filing this motion, the undersigned conferred with Co-Lead Counsel for Plaintiffs about this motion, and they indicated that they approve the filing of this motion.

CONCLUSION

For the reasons set forth herein, Plaintiffs request this honorable Court grant this Motion and allow Plaintiffs' Third Amended Complaint.

Dated: July 22, 2022

Respectfully submitted,

THE FERRARO LAW FIRM, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2022, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing upon counsel of record.

Dated: July 22, 2022

/s/ James L. Ferraro, Jr.
James L. Ferraro, Jr., Esq.